

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PEN AMERICAN CENTER, INC.,

Plaintiff,

- against -

JOSEPH R. BIDEN, JR. in his official capacity as
President of the United States,

Defendant.

No. 18 Civ. 9433 (LGS)

SETTLEMENT AGREEMENT

Plaintiff PEN American Center, Inc. and Defendant Joseph R. Biden, Jr., have agreed, by and through their respective attorneys, to resolve litigation between them according to the terms of the agreement that follows:

1. On or before February 18, 2021, the parties shall: a) file a joint stipulation of voluntary dismissal without prejudice; b) notify the Second Circuit Court of Appeals that Defendant's 1292(b) petition is moot by operation of this agreement.

2. In consideration for the Plaintiff's agreement to dismiss the complaint without prejudice, the Defendant agrees not to seek vacatur of the district court's decision granting in part and denying in part the Defendant's motion to dismiss, Dkt. No. 76.

3. The parties agree that Plaintiff and Defendant each shall bear its own costs and attorney's fees in connection with this action.

4. This Settlement Agreement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the Defendant, his agents, servants, or employees, or any other current or former employees or officers of the United States

government, and it is specifically denied that they are liable to the Plaintiff. This settlement is entered into by all parties for the purpose of compromising disputed claims and avoiding the expenses and risks of further litigation.

5. The terms of this Settlement Agreement establish no precedent. The parties understand and agree that this Settlement Agreement shall not be used by them or by any representative organization as a basis to seek or justify similar terms in any subsequent cases.

6. The terms, conditions, and requirements of this Settlement Agreement are not severable and the failure to agree, fulfill, or comply with any term, condition, or requirement renders the entire Settlement Agreement and the compromise settlement null and void.

7. This Settlement Agreement contains the entire agreement between the parties hereto and supersedes all previous agreements, whether written or oral, between the parties relating to the subject matter hereof. No promise or inducement has been made except as set forth herein, and no representation or understanding, whether written or oral, that is not expressly set forth herein shall be enforced or otherwise be given any force or effect in connection herewith.

8. This Settlement Agreement shall be considered a jointly drafted agreement and shall not be construed against any party as the drafter.

9. The parties agree that this Settlement Agreement, including all the terms and conditions of this compromise settlement and any additional agreements relating thereto, may be made public in their entirety, and the Plaintiff expressly consents to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

10. It is contemplated that this Settlement Agreement may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

WHEREAS, the parties accept the terms of this Settlement Agreement as of the dates
written below:

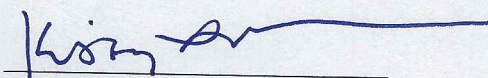
Executed this 18 day of February, 2021.

BY: Ashley Cheung

Scott R. McIntosh
Daniel Tenny
Joshua M. Salzman
Ashley A. Cheung
Attorneys, Appellate Staff
U.S. Department of Justice, Civil Division
950 Pennsylvania Ave. NW
Washington, D.C. 20530

Counsel for Defendant

Executed this 18th day of February, 2021.

BY: 

Kristy Parker
John Langford
Protect Democracy
2020 Pennsylvania Ave. NW
Suite #163
Washington, DC 20006

Counsel for Plaintiff